

**IN THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA
SAN JOSE**

Case No.: 21-5605

MICHAEL LYNN GABRIEL

Plaintiff,

vs.

SHIRLEY N, WEBER,

Secretary of State

Defendant.

**CLASS ACTION COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

))

CLASS ACTION COMPLAINT

Plaintiff Michael Lynn Gabriel individually, and on behalf of all others similarly situated, by and through counsel, brings this action against Shirley N, Weber, California Secretary of State. Plaintiff's allegations herein are based upon personal knowledge and belief as to his own acts and upon the investigation of his counsel and information and belief as to all other matter.

INTRODUCTION

1. The human body relies on a beating heart to survive. Voting is “the beating heart of democracy.” *League of Women Voters of Fla., Inc. v. Detzner*, 314 F. Supp. 3d 1205, 1215 (N.D. Fla. 2018). The right to vote is a “precious” right, *Harper v. State Bd. of Elections*, 383 U.S. 663, 670 (1966), “of the most fundamental significance under our constitutional structure,” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (internal quotation marks omitted). California’s recent action attacking the voting rights of its citizens is like a virus attacking the human heart. Without a remedy to undo the effects, our democracy will die.

2. California has a long history of imposing racially discriminatory voting requirements. In recent decades, many courts have recognized this history in striking down California voting laws because they discriminated

1 against all citizens. As late as 1959 and 1960 within living memory California
2 opposed the adoption of both the 14th and 15th Amendment to the US
3 Constitution and only reluctantly finally ratified them.
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5 3. The target of this lawsuit, is the Special California Governor
6 Recall election which continues the legislature's discriminatory tradition.
7 Enacted earlier this month, the democratically controlled California
8 Legislature threw out the rule of law and instituted its own high handed
9 method to deny a full and fair election to the People of California.
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11 4. The California democratically controlled California Legislature
12 in an effort to assure that the recalled Governot Newsom is re-elected changed
13 the existing law so as to effectively limit the number of people who could
14 register for the election as replacement candidate by reducing the filing period
15 to just one week and to prevent those unable to register within that period to
16 be forced to run as write in candidates and denying them the ability to have
17 their message carried as a candidate statement in the Voter Guide.
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19 5. The Democratically controlled California Legislature imposed
20 unjustified burdens placed disproportionate burdens on candidates attempting to
21 reach minority voters, Black voters, Latino voters, disabled voters.
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23 6. The Democratically controlled California Legislature makes a
24 minority candidate getting his or her message out more burdensome by barring
25 write in candidates, who usually are minority candidates from participating in
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1 the Voter Guide on the same and equal footing as the replacement candidates
2 who were able to make the registration in the artificially narrowed filing
3 period of just seven days.

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5 7. Indeed, the actions of the Democratically controlled California
6 Legislature represent the classic case of “solutions in search of a problem” that
7 has been found to indicate impermissible race-based voter suppression. *See*
8 *N.C. State Conference of NAACP v. McCrory*, 831 F.3d 204, 238 (4th Cir. 20
9

10 8. This Complaint challenges the actions of the Democratically
11 controlled California Legislature that, individually and cumulatively, make
12 voting more burdensome, particularly for Black, Latino, and disabled voters
13 by making it more difficult for minority candidates to both get on the ballot
14 and also getting their political message out to the electorate
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17 9. The actions by the democratically controlled California
18 Legislature imposes an unjustified burden on voting and minority candidates
19 running for Governor. The California legislature identified no state interest
20 sufficient to justify these added burdens.
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23 10. In addition to impermissibly burdening voters and discriminating
24 against voters on the basis of race or ethnicity, the challenged actions violate
25 numerous provisions of federal law. For example:
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- They place disproportionate burdens on voters of color, intentionally denying them an equal opportunity to participate in the political process by denying them access to minority candidates' messages. They thus violate Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the United States Constitution. The actions also violate the First Amendment to the U.S. Constitution, by limiting protected election-related expressive activities. *Meyer v. Grant*, 486 U.S. 414, 422-23 (1988).
- Even apart from their racially discriminatory motive and impact, the challenged action also place an unjustified burden on the ability of all California voters to exercise their fundamental right to vote. Any state restriction on the right to vote "must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation." *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 191 (2008) (Stevens, J., controlling op.) (internal quotation marks omitted). The Democratically controlled California Legislature deliberately and intentionally moved the election date forward so that only 7 days would exist for replacements candidates to file. Furthermore, the Democratically controlled California Legislature in not allowing

1 write in candidates who are properly registered not to be able to
2 place a candidate statement in the Voters Guide prior to the the
3 last date for submission by replacement candidates imposes
4 unequal treatment and severe burdens on the right of candidacy
5 without any legitimate justification, and thus violates the First and
6 Fourteenth Amendments to the Constitution.. Laws regulating
7 protected speech or compelling speech are subject to strict
8 scrutiny, but the Candidate statement restriction is not narrowly
9 tailored and does not serve any compelling state interest.
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12 11. For all of these reasons, the Democratically controlled California
13 Legislature, the California Secretary of State and Governor Newsom's actions
14 violate the U.S. Constitution and federal law and endangers the right to vote of
15 all Californians, and in particular voters of color. The Court should enjoin the
16 Recall Election for Governor Newsom set for September 14, 2021 and
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19 (a) order it be reset with the proper 30 days review period mandated by
20 the prior valid law
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22 (b) order that any write in candidates who properly register as write in
23 candidates before August 6 or Sept 6 if the election is extended 30
24 days have their candidate statement printed in the Voter's Guide if
25 they comply with the form of the candidate statement and pay the
26 required fee.
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THE PARTIES

Plaintiff

12. Plaintiff **MICHAEL LYNN GABRIEL** is an Arab American attorney and resident of the San Mateo County California.

Defendant

13. Defendant **SHIRLEY N. WEBER** is sued in her official capacity as California Secretary of State. Defendant Weber is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law. Under California law, the Secretary of State is the chief elections officer of the State and is responsible for the administration of state laws affecting voting and election

JURISDICTION

14. Plaintiff bring this action under 42 U.S.C. § 1983 to redress the deprivation under color of state law of rights secured by Sections 2 and 208 of the Voting Rights Act, 52 U.S.C. §§ 10301, 10508; and under the First, Fourteenth and Fifteenth Amendments of the United States Constitution.

15. The Court has subject matter jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States, and specifically, laws and Constitutional provisions protecting the right to vote.

1 Plaintiff bring this action to redress the deprivation, under color of state law, of
2 rights, privileges, and immunities secured by the Constitution of the United
3 States and federal law. Plaintiff bring this action to secure equitable relief
4 under federal law providing for the protection of voting rights, pursuant to 28
5 U.S.C. §§ 2201 and 2202.
6

7 16. This Court has personal jurisdiction over Defendant, who is sued
8 only in her official capacities as officers of the State of California or its
9 political subdivisions.
10

11 17. In addition, Plaintiff's activity as a candidate and getting a candidate
12 statement published in the Voters' Guide is prohibited or restricted as a result of
13 the Defendant's actions, and thus, a substantial part of the events that gave rise
14 to Plaintiffs' claims occurred in this judicial district.
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17 18. This Court has the authority to enter a declaratory judgment and to
18 provide preliminary injunctive relief pursuant to Rules 57 and 65 of the
19 Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.
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21 **CLASS ACTION ALLEGATIONS**

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23 19. This action is brought, and may properly proceed, as a class action,
24 pursuant to Rule 23(a) and 23(b)(2) and (3) of the Fed Rules of Civ Proc.
25

26 20. Plaintiff seeks certification of a Class defined as follows :

27 **STATEWIDE CLASS**

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21. All persons in the State of California wishing to run or vote in the in the Recall Election of Gavin Newsom.

22. Plaintiff reserves the right to modify, change, or expand the class definitions if discovery and/or further investigation reveal that they should be expanded or otherwise modified.

23. **Numerosity**: The Class is so numerous that joinder of all members is impracticable. While the exact number and identities of individual members of the Class is unknown at this time, Plaintiff believes, and on that basis allege, that At least 20 other persons had their voting rights violated in a similar manner as alleged herein against the Plaintiff.

24. **Existence/Predominance of Common Questions of Fact and Law**: Common questions of law and fact exist as to all members of the Class. These questions predominate over the questions affecting individual Class members. These common legal and factual questions include, but are not limited to:

(a) Violation fo the Voting Rights Act by only giving one week to register for the election.

(b) Violation of the Voting Rights Act by not allowing write in candidates under any circumstances submitting a candidate statement for inclusion in the Voter's Guide.

25. **Adequacy**: Plaintiff is an adequate representative for the Class because his interests do not conflict with the interests of the Class that he seeks to

1 represent. Plaintiff is competent and highly experienced in complex litigation
2 and intends to prosecute this action vigorously. The interests of the Class will
3 be fairly and adequately protected by Plaintiff.

4
5 26. **Superiority**: A class action is superior to all other available means
6 of fair and efficient adjudication of the claims of Plaintiff and members of the
7 Class. The injury suffered by each individual Class member is relatively small
8 in comparison to the burden and expense of individual prosecution of the
9 complex and extensive litigation necessitated by Defendant's conduct. It would
10 be virtually impossible for members of the Class individually to redress
11 effectively the wrongs done to them by Defendant. Even if Class members
12 could afford such individual litigation, the court system could not.
13 Individualized litigation presents a potential for inconsistent or contradictory
14 judgments. Individualized litigation increases the delay and expense to all
15 parties, and to the court system, presented by the complex legal and factual
16 issues of the case. By contrast, the class action device presents far fewer
17 management difficulties, and provides the benefits of single adjudication, an
18 economy of scale, and comprehensive supervision by a single court. Upon
19 information and belief, members of the Class can be readily identified and
20 notified.
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1 27. Defendant has acted, and refuses to act, on grounds generally applicable
2 to the Class, hereby making appropriate final equitable and injunctive relief
3 with respect to the Class as as a whole.
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5 **FACTUAL ALLEGATIONS**

6 28. The Democratically controlled California Legislature passed a law
7 to specifically designed to move up of the election date up a month and only
8 allow a one week period to register to run as a replacement candidate.
9

10 29. The prior law required a thirty day period for to review the estimated
11 costs of the special election before setting the date. Instead, the Democratically
12 controlled California legislature passed a signed by the governor whose recall
13 was to be held waiving that state law and allowing the election date to be set
14 immediately.
15

16 30. The sole purpose of the law was specifically to advance the
17 election date and give people especially minorities less time to enter the race
18
19

20 31. The result of the new law was that candidates only had 7 days
21 from July 9 to July 16 to file a declaration of candidacy and submit a
22 nominating petition of 65 signatures, file a form 501 Candidate Intention, file
23 their tax returns for the last 5 years, open a campaign bank account and file a
24 Form 700 Statement of Economic Interests to make the ballot as replacement
25 candidates.
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1 32. Anyone like the Plaintiff who was unable to do all in the
2 seven day period could not make the ballot as a replacement candidate but
3 could still run as a write in candidate but they would not be their candidate
4 statement included in the Voter Guide even if they were fully registered and
5 approved for the ballot by August 6 for Replacement candidates doing so

7 33. Plaintiff, a Arab American could not get the 65 signatures by
8 that date so was unable to file as regular candidate. Within just a week period.
9 If the election had been originally set 30 days further back everyone including
10 fellow minorities would have an additional month to collect the signatories and
11 make the printed ballot as a replacement candidate
12

14 34. Moving the election date up by Governor Newsom was specifically
15 and undeniably intended to prevent candidates and specific minority candidates
16 from entering the race.
17

18 35 There had been over 60 persons who had filed From 501 as a
19 candidate for the election but only 41 were able to get the 65 signatures or
20 otherwise comply within the specific filing week so as to become a replacement
21 candidate. The rest like the Plaintiff if they choose to run must now do so as
22 write in candidate. Write in candidates still need 65 signatures the same as the
23 replacement candidates. For that reason in this recall election because of the
24 short time, there is no practical difference between the write in candidate and
25 replacement candidate except that the Defendant has rewritten the candidate
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28

1 statement guideline to bar write in candidates from having a candidate
2 statement published in the Voters' Guide even if they like the Plaintiff have
3 paid to have it done.

4
5 36. This revision of the candidate statement guidelines followed the
6 Plaintiff's submission of his candidate statement along with the full payment.
7 The subsequent barring of the Plaintiff's Candidate Statement from the Voters'
8 Guide sprang from the fact that if published and minority voters saw the
9 support of Jesse Jackson it probably would cost Governor Newsom the election.
10 For that reason alone, Plaintiff and his planks had to be kept out of the Voters
11 Guide to help Governor Newsom win.
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14 37. The decision to deny write in candidates in the Voter Guide was
15 made only after the Plaintiff's candidate statement was viewed. It was then
16 realized that if minority voters saw the Plaintiff's candidate statement that
17 enough minority voters and Independents could investigate his web site
18 www.MichaelForGov.com. They could then join with Jesse Jackson and
19 support Plaintiff on the ATAC Bill, his Immigration initiative and his
20 Legislative corruption reform which would cost Governor Newsom the
21 election.
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25 38. The Plaintiff's candidate statement which so alarmed the
26 Democratically controlled California Legislature that it tore up the rule of law
27 to keep from the voters is:
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1 “The State of California needs fundamental change. It is the policies
2 and direction of California that are at the heart of this election.
3 Whether an Independent or a Minority, you should consider standing
4 with Jesse Jackson and me in this election. Jesse Jackson and I
5 authored the *Access to American Courts Bill HR2009 (ATAC BILL)*
6 confirming the right of all Americans to be able to sue the government
7 to stop unconstitutional violations. The Biden Administration recently
8 stated in court that Americans cannot sue the government even to stop
9 unconstitutional actions without the government's consent. In response
10 Jesse Jackson has stated the Biden's Administration's reinterpretation
11 of the Constitution turns the Bill of Rights into a Bill of Mere
12 Suggestions'. I am a conservative while Jesse Jackson is a liberal. yet
13 we both believe that ATAC Bill is the most important constitutional
14 and civil rights bill in 50 years. We ask you stand with us and support
15 the ATAC BILL for all America. Does anyone really have any
16 protectable constitutional rights if no one is allowed to sue when those
17 rights are violated? Besides the ATAC Bill, I have solutions for
18 *IMMIGRATION REFORM, INFRASTRUCTURE REFORM,*
19 *HIGH SPEED RAIL REFORM, HOUSING DEVELOPMENT*
20 *REFORM, ENVIRONMENTAL ENERGY REFORM, TAX*
21 *REFORM, SAFETY THROUGH GUN LICENSING, CASINO*
22 *GAMBLING* and *LEGISLATIVE REFORM*. Visit my site
23 www.MichaelForGov.com and see what Jesse Jackson and I are
24 proposing and then **STAND WITH US: ON THE RIGHT SIDE OF**
25 **JUSTICE, THE RIGHT SIDE OF THE LAW AND THE RIGHT**
26 **SIDE OF HISTORY.”**

27 39. It was after seeing Plaintiff's candidate statement that the Defendant
28

1 announced that write in candidates could would not appear in the Voters
2 Guide. The Democratically controlled California Legislature does not want the
3 Plaintiff;s Candidate Statement published because it will cost them votes and
4 probably the election.
5

6 40. Independents and Minorities would be shocked to learn that the
7 Biden Administration is attempting to rewrite the Constitution and the deny all
8 Americans the right to sue the government to stop unconstitutional violations
9 They would be further shocked to know that Governor Gavin Newsom has by
10 his silence on the issue tacitly approved the Biden Administration efforts *to*
11 *turn the Bill of Rights into a Bill of Mere Suggestions as stated by Rev*
12 *Jackson.*
13
14

15 41. What started as a basic albeit a large eminent domain case has turned
16 into the first major civil rights constitutional rights case in 50 years along with
17 a constitutional rights bill being written introduced and then stalled by the
18 Democrats
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21 42. To briefly recount what had happened. Last year, the Cherokee
22 filed a federal court class action for the return of their land that was taken and
23 never used under the infamous the 1835 Trail of Tears Treaty along with a fair
24 payment for the land that's not returned. The Cherokees had been forced to
25 accept less than 25% of the actual value of the land while under gunpoint, in
26 chains and in concentration camps for land that they did not want to sale or
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1 leave. Furthermore, up to 10.000 Cherokee died on the Trail of Tears, nearly
2 one half of all Cherokee, on the 2200 miles death march in the worst winter
3 ever recorded on the continental United States. All this was done as every
4 Cherokee is aware in furtherance of the ethnic cleansing program promulgated
5 under the Indian Removal Act, the first of its type in the modern age.
6

7 43. The Biden Administration responded to the complaint by filing in
8 Delaware district court to motion to dismiss the Cherokee class action lawsuit
9 which is solely based on the unconstitutional violation of the 5th Amendment
10 asserting that the government cannot be sued without its consent through its
11 extension of the *Doctrine of Sovereign Immunity* to the Constitution itself. The
12 last and only time this argument was tried was in 1888 in the case US v Lee and
13 the government failed. Up to now, the Doctrine has only been applied to federal
14 statutes on the basis that since the government created the statute, it can decide
15 who can sue under it. However, the government did not create the Bill of
16 Rights, the People did and thus the government cannot prevent itself from being
17 sued to stop its unconstitutional violations despite the assertions of the Biden
18 Administration.
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23 44. It was because of the significance of the Biden Administration's
24 attempt to rewrite the Constitution and bar all future suits against the
25 government to stop unconstitutional actions, that the Rev Jackson who is a
26 Democratic and liberal joined with the Plaintiff a conservative and
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28

1 Independent to write the ATAC Bill HR 2009 Exhibit 3 which Congressman
2 Danny Davis a Democrat introduced on March 28, 2018 into the US House
3 where Nancy Pelosi has effectively killed it.
4

5 45 The Biden Administration convinced the District Court to extend the
6 Doctrine of Sovereign Immunity to the entire US Constitution for the first
7 time. The Cherokee are not done. They are continuing their fight in the courts
8 in the belief that ultimately it will be recognized again that every American,
9 Black, White, Indian and Asian can sue government without its consent to stop
10 unconstitutional violations. That is what everyone had been taught was every
11 American's right until this lone decision.
12
13

14 46. The Biden Administration attack on constitutional rights has caused
15 such concern that Plaintiff was asked as the author of the ATAC Bill by
16 members of the Democratic Hispanic Caucus to wrote a summary of the bill to
17 explain how it protects the right of Hispanic People from the Biden
18 Administration,
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21 47. Plaintiff's summary of the ATAC Bill is set forth as Exhibit 2. The
22 Democratic Congressional Hispanic Caucus is planning upcoming meetings with
23 Rev Jackson, and Congressman Davis to determine its response to the Biden
24 Administration's assault on the constitutional right to sue the government and
25 hold it accountable for its unconstitutional actions. There seems to brewing a
26 civil war in the Democratic Party over Biden's assault on the Constitution. Thus,
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1 the Democratically controlled California Legislature would have a reason to
2 conceal all of this from minority and Independent voters by refusing to include
3 Plaintiff's candidate statement in the Voters' Guide.

4
5 **48. The ATAC Bill is the first major Constitutional Bill in 50 years.**

6 While the ATAC Bill is brought by the Cherokee it applies to all Americans as
7 all it does is confirm what the People have always believed - that all Americans
8 have the right to sue the government without the government's consent in order
9 to to stop it's unconstitutional actions.

11 49. he Indian vote will be critical in the upcoming midterm and 2024
12 Presidential elections. It is therefore quite natural for the Democratically
13 controlled California legislature to try to conceal from the Indian voters how
14 fellow Indians have been mistreated by the Biden Administration and other
15 Democrats.
16

18 50. President Biden had announced a few days after taking office
19 sweeping Native American and minority programs for the redress of the harms
20 done to them over the years. However, those programs appear not to apply to the
21 Cherokee. Less than a week after making that announcement President Biden
22 moved to dismiss the Class Action on the ground that no one sue the government
23 even to stop unconstitutional actions.
24

26 51. The hypocrisy of this Democratic position is highlighted even
27 further in that it was the Cherokees who are responsible for giving the control of
28

1 the Senate to the Democrats. It was the 28,000+ voting bloc of Indian justice
2 supporters that the Cherokees at the last minute threw behind Senator Ossoff
3 which gave him his victory. This came about because Senator Ossoff's mother
4 had convinced Stuart Anglin the Cherokee lead plaintiff that he was a supporter
5 of Indian justice. The 28,000 votes if taken away from Ossoff and given to
6 Senator Perdue instead would have given him the election.
7

8
9 52 The Cherokee regret supporting Ossoff. Now having won, Ossoff
10 will not even take Cherokee calls or setup an appointment to speak about
11 Cherokee issues. So Be it. The Cherokee elected one senator, they can do so
12 again not just for Georgia but Alabama as well in its 2022 election.
13

14 53 On the national scene, Native Americans compose the largest
15 uncommitted voting bloc in the nation. In the 2010 census, 819000 people
16 identified themselves as having Cherokee lineage. When all Indians, their non-
17 indian relatives and friends in support of Indian justice come together that is a
18 bloc of over 5 million people. This bloc can go either Republican or Democratic
19 depending on how the government handles Indian justice. The first test of that
20 commitment to Indian Justice is the Cherokee Trail of Return Bill.. If just 1300
21 Cherokee can deliver 28,000 votes to Democrats in a short period of time what
22 can 819000 do in a year and a half? Perdue could not see this and Ossoff has
23 ignored this fact, but the Cherokee are moving on.
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28 54. Plaintiff's second plank is an immigration reform bill which is not an

1 amnesty and solves immigration reform. Such an initiative is immensely
2 unpopular with the Democratically controlled California legislature as it would
3 take support from the Democratic party while giving a pathway to citizenship to
4 illegal aliens for the first time. The Plaintiff's immigration reform is not an
5 amnesty, requires illegals to work for their citizenship, does not cost the state,
6 money and in fact probably makes the state money and cures the problem
7 forever so the country will not have the problem ever again. The Democratic
8 Legislature and Governor Newsom do not want minorities and independent to
9 know of Plaintiff's solution and thus it is moving the election up has a disparate
10 impact on minorities by keeping this information from them.
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14 55. Plaintiff's third Plank is for Legislative Corruption Reform, It bars
15 the appearance of impropriety and possibility of corruption by barring
16 government officials and their staff from serving on for profit boards. This
17 problem is manifested in the corruption investigation of Hunter Biden where
18 allegations of 10% of the fees he received from clients for alleged influence
19 peddling were supposedly paid to his father President Biden. This reform will
20 cost many members of the legislature fortunes. The House has recently required
21 it of their members as did the Senate so it is time now to clean up California.
22
23
24

25 56 Is it any wonder when the Democrats saw these three planks that they
26 tore up the rule of law and have done everything they could to keep voters from
27 seeing these planks by keeping the Plaintiff out of the Voter's Guide.
28

1 57. The refusal to publish minority candidate statements received prior
2 to Aug 6 from registered write in candidates violates the voting rights act and
3 the 14 and 15 amendments to the US Constitution as well as the California
4 Constitution
5

6 58. To be listed in the voter guide the only stated requirements is that
7 the people seeking to run file a declaration of candidacy, the candidate statement
8 and pay the fee of \$6250. Plaintiff did all that and then after accepting the
9 payment the California Secretary of State rewrote the candidate statement rules
10 Exhibit 1 and then reversed itself and refused to accept Plaintiff's candidate
11 statement. The defendants stated for the first time that only regular candidates
12 can appear on the printed ballot. Thus under this revision of the rules write in
13 candidates even those who Plaintiff will be approved before the August 6 print
14 deadline date cannot be in the Voters Guide, but the defendant kept the payment
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18 59. The Defendant's actions were a blatant effort to keep minority
19 nominees, such as Plaintiff an Arab American, from reaching the electorate. This
20 is a clear violation of the voting rights act
21

22 60. The guidelines required that Plaintiff both file a Form 501 and pay the
23 fee of \$6250 both of which Plaintiff had done. Nothing in the instructions said
24 that the application would be limited to replacement candidates alone.
25

26 61. Furthermore the date for payment of the fee for replacement candidates
27 is August 6 in order so as to make the to Voters Guide
28

1 "If a payment for the candidate statement is not received, or if the
2 payment is made by a check and it does not clear the candidate's
3 banking institution before the end of the state Voter Information Guide
4 public display period (August 6, 2021), the candidate statement will not
5 be printed in the state Voter Information Guide."|"
6

7 62. Write in candidate should have the August 6 date as well to be in
8 the guide as the state has not yet prepared ballot so there is no burden on the
9 state in both adding the names of write in candidates who have qualified for the
10 election as of that time and also putting their candidate statements in the voter
11 guide.
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14 63. The California Supreme Court in Thompson vs Mellon 9 Cal. 3D
15 97 (1973) restated that the right to run for office is a fundamental right.
16

17 "We concluded in Zeilenga that the right to hold office was a fundamental
18 right and that restrictions upon its exercise must, therefore, be strictly
19 scrutinized"
20

21 64. Thus a strict scrutiny test will be applied to any decision on refusal to
22 accept a candidate prior to the August 6 date . There is no reason not to accept
23 Plaintiff's candidate statement for inclusion into the voting guide as long as
24 Plaintiff make the ballot by August 6. That is the same treatment for
25 replacement candidates who do not pay their fee by then. Use of that date for
26 write candidates to be in the voter guide does not disrupt in the election process
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1 65. The new limitation of who can be on the Voter Guide is arbitrary,
2 capricious and unreasonable as there is no basis for limiting the Plaintiff's
3 access to the Voter Guide if he qualifies for the election by August 6 which is
4 the last date for replacement candidates to be in the Voter's Guide by paying
5 for their candidate statement an act which the Plaintiff has already done
6

7 66. These actions were was primarily directed at minorities and
8 minorities because Jesse Jackson and Plaintiff have created planks for
9 presentation to the California people which would pull the black, Hispanic and
10 Independent vote from Governor Newsom and cost his the election. Keeping
11 Plaintiff as well as other minorities off the ballot and out of the Voters Guide is
12 a deliberate attempt to keep minorities from presenting and their ideas and
13 participating in this election
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17 67. The remedy is the twofold for these violations

18 1. Moving the election back to at least Oct 14 when it should have
19 been held at the earliest if the discriminatory law moving the election
20 forward had not been passed
21

22 2. Printing the names of write in candidates and on the ballot and
23 having their candidate statements accepted for the Voters Guide if they
24 qualify for the election by August 6 or Sept 6 of the election is pushed
25 back because of the Voting Rights violation.
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DEFENDANT CLASS ACTION ALLEGATIONS

Defendant Class Supervisors of Elections

68. This action is brought against Defendant Shirley N. Weber As public officer, Defendant Weber can be expected to litigate this action with the vigor and forthrightness required of a representative party.

69. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(1)(A) in that the prosecution of separate actions against individual members of the class would create a risk of inconsistent or varied adjudication with respect to individual members of the class which would establish incompatible standards of conduct for the Defendant.

70. A defendant class is independently appropriate under Federal Rule of Civil Procedure 23(b)(1)(B) because adjudications with respect to individual class members, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede the ability of the other nonparty members to protect their interests.

71. In the alternative, this action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(2) in that the relief Plaintiffs seek— namely, an injunction prohibiting application or

1 enforcement of the challenged restrictions—is identical as to each member
2 of the defendant class and makes final injunctive relief or corresponding
3 declaratory relief appropriate with respect to the class as a whole.
4

5 **CLAIMS FOR RELIEF**

6 **FIRST CLAIM FOR RELIEF**

7 **Violation of Section 2 of the Voting Rights**

8 **Act 52 U.S.C. § 10301, *et seq.***

9 **(Intentional Racial Discrimination and Discriminatory Results)**

10 72. Plaintiff realleges and incorporates by reference all prior
11 paragraphs of this Complaint as though fully set forth herein.
12

13 73. Section 2 of the Voting Rights Act, 52 U.S.C. § 10301(a),
14 provides in pertinent part:
15

16 No voting qualification or prerequisite to voting or standard, practice,
17 or procedure shall be imposed or applied by any State or political
18 subdivision in a manner which results in a denial or abridgement of the
19 right of any citizen of the United States to vote on account of race or
20 color

21 74. The Defendant's Voter Guide participation limitation to only
22 replacement candidates violates Section 2 of the Voting Rights Act because
23 these provisions were adopted for the purpose of denying voters of color full
24 and equal access to the political process.

25 75. These provisions would violate Section 2 even in the absence of
26 discriminatory intent, because, by their discriminatory impact, they will
27
28

1 “result in a denial or abridgement” of the right of voters of color to vote and
2 to participate equally in the democratic process.

3 76. violates of the Voting Rights Act because, given the “totality of
4 circumstances,” including the long history of racial discrimination in
5 California, the challenged provisions, individually and cumulatively, will
6 disproportionately deny voters of color, including Black and Latino voters,
7 an equal opportunity to participate in the political process and to elect
8 representatives of their choice.
9
10

11 **SECOND CLAIM FOR RELIEF**

12 **Fourteenth Amendment**

13 **U.S. Const. amend., XIV; 42 U.S.C. § 1983**

14 **(Intentional Racial Discrimination)**

15 77. Plaintiff realleges and incorporates by reference all prior
16 paragraphs of this Complaint as though fully set forth herein.
17
18

19 78. 42 U.S.C. § 1983 provides a cause of action, including for
20 declaratory or injunctive relief, against “[e]very person who, under color of
21 any statute, ordinance, regulation, custom, or usage ... subjects, or causes to
22 be subjected, any citizen of the United States or other person within the
23 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
24 secured by the Constitution and laws....”
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1 79. The arbitrarily created Voter Guide participation limitation
2 violates the Fourteenth Amendment to the United States Constitution
3 because they were purposefully enacted and operate to deny, abridge, or
4 suppress the right to vote of otherwise eligible voters on account of race or
5 color.
6

7 80. The facts alleged herein reveal that race was a motivating factor
8 in the arbitrarily created Voter Guide participation limitation which was
9 adopted with the racially discriminatory intent to raise obstacles to voting
10 for people of color, including Black and Latino voters. *See Vill. of Arlington*
11 *Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977).
12
13

14 81. California's long history of racial discrimination in the context of
15 voting, the known and reasonably foreseeable discriminatory impact of The
16 arbitrarily created Voter Guide participation limitation, the legislative
17 history of the special recall election, and the tenuous and pretextual nature of
18 the stated justifications for the Voter Guide participation limitation raise a
19 strong inference that it was enacted with a discriminatory purpose in
20 violation of the Fourteenth Amendment.
21
22

23 **THIRD CLAIM FOR RELIEF**

24 **Fifteenth Amendment**

25 U.S. Const. amend., XV; 42 U.S.C. § 1983
26 (Intentional Racial Discrimination in Voting)
27
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1 82. Plaintiff realleges and incorporates by reference all prior paragraphs
2 of this Complaint as though fully set forth herein.

3 83. 42 U.S.C. § 1983 provides a cause of action, including for declaratory
4 or injunctive relief, against “[e]very person who, under color of any statute,
5 ordinance, regulation, custom, or usage... subjects, or causes to be subjected,
6 any citizen of the United States or other person within the jurisdiction thereof to
7 the deprivation of any rights, privileges, or immunities secured by the
8 Constitution and laws....”

9 84. Section 1 of the Fifteenth Amendment to the United State
10 Constitution prohibits states from denying or abridging the right of American
11 citizens to vote on account of their race or color.

12 85. The arbitrarily created Voter Guide participation limitation violates
13 the Fifteenth Amendment to the United States Constitution because Defendants
14 intentionally enacted and intend to administer and enforce the Voter Guide
15 participation limitation so as to deny and abridge the right to vote on account of
16 race or color.

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22 **FOURTH CLAIM FOR RELIEF**

23 **First and Fourteenth Amendments**

24 **U.S. Const. amends. I, XIV; 42 U.S.C. § 1983**

25 **(Undue Burden on the Right to Vote)**

1 86. Plaintiff realleges and incorporates by reference all prior
2 paragraphs of this Complaint as though fully set forth herein.

3 87. 42 U.S.C. § 1983 provides a cause of action, including for
4 declaratory or injunctive relief, against “[e]very person who, under color of
5 any statute, ordinance, regulation, custom, or usage...subjects, or causes to
6 be subjected, any citizen of the United States or other person within the
7 jurisdiction thereof to the deprivation of any rights, privileges, or
8 immunities secured by the Constitution and laws....”

9 88. The right to vote is a fundamental constitutional right protected by
10 both the First and Fourteenth Amendments to the United States Constitution
11 as well as the Constitution of the State of California.

12 89. State election laws may not place burdens upon the constitutional
13 right to vote unless relevant and legitimate state interests of sufficient weight
14 necessarily justify the magnitude and character of the burdens imposed. *See*
15 *Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460
16 U.S. 780, 789 (1983).

17 90. Any burden on the constitutional right to vote—even a slight
18 one— “must be justified by relevant and legitimate state interests
19 sufficiently weighty to justify the limitation.” *Crawford v. Marion County*
20 *Election Bd.*, 553 U.S. 181, 191 (2008) (Stevens, J., controlling op.) (internal
21 quotation marks omitted).

1 91. The more a challenged law burdens the right to vote, the more
2 strictly must it be scrutinized. *See Democratic Exec. Comm. of Fla. v. Lee*, 915
3 F.3d 1312, 1318-19 (11th Cir. 2019).

4 92. The arbitrarily created Voter Guide participation limitation imposes
5 severe burdens or, at a minimum, significant burdens, on the voting rights of
6 eligible Californians by limiting their access to political information related to
7 helping them determine the candidate for whom a vote and support may be
8 given.
9

10 93. Given that the Defendant never disclosed the prohibition of write in
11 candidates placing their candidates statements in the Voter Guide until the Plaintiff
12 tried to do so shows that the Defendant is unable to point to any substantial
13 evidence to justify the hastily added bar of write in candidates from submitting a
14 candidate statement in the Voter's Guide. These burdens accordingly lack any
15 constitutionally adequate justification and the challenges provisions of the voter
16 guide participation must be enjoined
17
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19
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21 **FIFTH CLAIM FOR RELIEF**
22 **Freedom of Speech and Compelled Speech**
23 **U.S. Const. amend. I; 42 U.S.C. § 1983**
24 **(Voter Guide Participation limitation)**

25 94. Plaintiff realleges and incorporates by reference all prior paragraphs
26 of this Complaint as though fully set forth herein.
27
28

1 95. 42 U.S.C. § 1983 provides a cause of action, including for declaratory
2 or injunctive relief, against “[e]very person who, under color of any statute,
3 ordinance, regulation, custom, or usage...subjects, or causes to be subjected,
4 any citizen of the United States or other person within the jurisdiction thereof to
5 the deprivation of any rights, privileges, or immunities secured by the
6 Constitution and laws....”
7

8
9 96. Plaintiff and indeed anyone running for governor in California and
10 wishing got a fair and honest election enjoys rights under the First Amendment
11 to the United States Constitution, as applied to the states by the
12 Fourteenth Amendment, to engage in protected speech and expression,
13 including political speech.
14

15 97. In seeking to have their candidates statements published in the
16 state Voter Guide write in candidates who have properly registered for the
17 election before the publication deadline for the submission of candidate
18 statements are engaged in speech and expression protected by the First
19 Amendment. There is no detriment being suffered by the state in accepting for
20 publication candidate statements from legitimate candidates willing to pay for
21 the publication and the submission is made during the time when submissions
22 are being still open for regular replacements candidates.
23
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26 98. Plaintiff and other write in candidates submitting candidate
27 statements in the course of the election, constitute speech and expressive
28
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1 conduct intended to share Plaintiffs' belief in the importance of participation
2 by all eligible citizens, including marginalized and excluded constituencies, in
3 the democratic process. Advocating for that belief by working to persuade
4 Californians to vote is core political speech and expression. *See Meyer*, 486
5 U.S. at 421-23.

6
7 99. Restrictions on protected political speech and expression violate the
8 First Amendment when they "significantly inhibit" election-related speech and
9 association and are "not warranted by the state interests ... alleged to justify
10 [the] restrictions." *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182,
11 192 (1999). Laws that burden core political speech are subject to "exacting
12 scrutiny" and will be upheld only if the restrictions are "narrowly tailored to
13 serve an overriding state interest." *McIntyre v. Ohio Elections Comm'n*, 514
14 U.S. 334, 346-47 (1995).

15
16
17
18 100. The Defendant Shirley N Weber's limitation of participation in the
19 California Voters; Guide to just the few persons who could register in the
20 artificially created 7 day period as replacement candidates and not allowing
21 write in candidates any such equal right even when time exists infringes on
22 Plaintiff's and all minority candidates' First Amendment rights. This action
23 chills the protected speech and expression that occurs during voter registration
24 and campaign activities.
25
26
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1 101. The intent and effect of the Voter Guide participation limitation's
2 effect is to diminish and impair Plaintiff's and all persons including minorities
3 wishing to run for governor in their ability to engage in protected political
4 speech and expression. It is intended to suppress the dissemination of their
5 message however unpopular with the Democratic party before the People so
6 they can not make an informed decision as to whom to vote and support.
7

8
9 102. The Voter Guide publication limitation is not warranted by any
10 sufficiently weighty state interest. The State lacks any legitimate interest in
11 sowing doubt and uncertainty among eligible California voters by denying
12 access to the voters guide to qualified write in candidates many of whom may
13 have missed being a replacement candidate like the Planiistss solely because of
14 the extremely short and artificially created narrow window of registration for
15 the election to wit: 7 days.
16
17

18 103. The Voter Guide participation limitation therefore represents an
19 unconstitutional restriction on political speech and expression and should be
20 enjoined.
21

22 104 "Some of [the Supreme] Court's leading First Amendment
23 precedents have established the principle that freedom of speech prohibits the
24 government from telling people what they must say." *Rumsfeld v. Forum for*
25 *Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006). A law that
26 "compel[s] individuals to speak a particular message" is a content-based
27
28
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1 regulation of speech and is therefore “presumptively unconstitutional.” *Nat’l*
2 *Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2371 (2018).

3 105. The Voter Guide candidate participation limitation is not narrowly
4 tailored to serve any compelling or overriding state interest. To the extent the
5 government believes that the Voter Guide limitation is needed, the government
6 must speak for itself. Because the Voter Guide participation limitation denies
7 properly registered write in candidates for which people will be voting at the
8 election to submit a candidate statement simply because they are write in
9 candidates and for no other reason limits their 1st amendment right to speak
10 and thereby affects their fundamental right under California law to be a
11 candidate and run for office. As such the voter guide limitation for properly
12 registered candidates who will be registered while the submission window is
13 open for replacement candidates should have their candidate statements
14 published and the refusal to do so violates the First Amendment and should be
15 enjoined.
16

17 106. The same rationale and logic exists for write in candidates
18 having their names included on the printed the ballots if registered before the
19 time that the ballots are printed. If the elections is extended then the ballot
20 printing date will be extended as well. So any addition of write in candidates
21 names on the ballots will not burden the state if said names are submitted prior
22 to the publishing date for the ballots.
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PRAYER FOR RELIEF

107. Wherefore, Plaintiffs respectfully request that this Court:

a. Issue a declaratory judgment, pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57, declaring that the acceleration of the Special California Recall Election for Governor and the limitation to participation in the Voters Guide to only replacement candidates who were fortunate enough to have registered in the one specially created registration period are illegal and unconstitutional in violation of Sections 2 and 208 of the Voting Rights Act of 1965, 52 U.S.C. §§ 10301 and 10508, and the First, Fourteenth, and Fifteenth Amendments to the United States Constitution;

b. Preliminarily and permanently enjoin Defendant Shirley N Weber her respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from holding the recall election for Governor Newsom until the state mandated 30 day review period had been completed and from denying properly registered write candidates from being in the Voter's Guide if registered prior to the closing date allowed to replacement candidates

- 1 c. Retain jurisdiction and subject Defendants to a preclearance
2 requirement pursuant to Section 3(c) of the Voting Rights Act, 52
3 U.S.C. § 10302(c);
4
5 d. Issue an order requiring Defendant to pay Plaintiffs' costs, expenses,
6 and reasonable attorneys' fees incurred in the prosecution of this
7 action, as authorized by, *inter alia*, 42 U.S.C. § 1988 and other
8 applicable laws;
9
10 f. If write in candidates fully register before the printing of the ballots, their
11 names are to be added on the ballots the same as replacement candidates
12
13 e. Grant such other and further relief as may be just and equitable.

14 Dated: July 19, 2021

15 Respectfully Submitted

16 s Michael Lynn Gabriel

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